



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 24, 1998

Ms. Merri Schneider-Vogel  
Bracewell & Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR98-1032

Dear Ms. Schneider-Vogel:

On behalf of the Pasadena Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114737.

The school district received a request from a parent for attorney fee bills for legal services provided the school district pertaining to the parent's child's education. You state that you have redacted entries on the bills that do not pertain to the requestor's child. You assert that portions of the requested bills are excepted from required public disclosure based on sections 552.101, 552.103 and 552.107(1) of the Government Code. You have submitted a representative sample of the requested information.<sup>1</sup>

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, gives parents a right to inspect the education records of their children. We believe the fee bills that concern the requestor's child are education records for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Generally, exceptions to disclosure under the Open Records Act do not apply to a student's or a parent's request for his child's educational records pursuant to FERPA. *See* Open Records Decision No. 431 (1985). Thus, section 552.103 may not be applied to deny a parent his right to inspect his child's education records under FERPA. *See id.* at 3. However, this office has been informed by the Family Policy Compliance Office of the United States Department of Education that a parent's right to information about his child under FERPA does not prevail over a school district's right to

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

assert the attorney-client privilege. Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education, to Loretta R. DeHay, Assistant Attorney General, Office of the Texas Attorney General (Dec. 1994). The Open Records Act incorporates the attorney-client privilege in section 552.107(1) of the Government Code and applies to

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client. Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* We have marked the information the school district may withhold from public disclosure based on section 552.107(1).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 114737

Enclosures: Marked documents